CHONG CHOOI YING & ORS.

v.

GUAN SOON DVPT. PTE. LTD. & ANOR.

HIGH COURT, SINGAPORE
LP THEAN J
[SUIT NO. 2083 OF 1988]
7 JUNE 1991

COMPANY LAW: *Sale of company property - Valuation report on company - Gross undervaluation of company property - Benefit of shareholders - Whether minority shareholders.*

CIVIL PROCEDURE: *Quia timet - Serious questions - Balance of convenience - Minority shareholders - Irreversible and irreparable damage.*

The first defendant G company was a family company, the second defendant being its managing director and chairman. The plaintiffs were minority shareholders as well as directors of G.

In June 1988, Cockpit Hotel (CH), which was controlled by TLS, was in financial difficulties. TLS then proposed to acquire all the shares of G so that they could be used as security for loans to solve the financial problem faced by CH. The proposed acquisition price was S$16 million but no agreement was reached with the plaintiffs.

In August 1988, TLS made an alternative proposal that G sell one of its properties in Changi (the Changi property) to CH in exchange for shares worth S$20 million to be issued by CH. This proposal too was not accepted by the plaintiffs.

In September 1988, TLS proposed to G to sell some of its other properties and declare an interim dividend of S$12 million, less tax. The plaintiffs agreed in principle to the dividend but wished to know if there were in fact profits available for that purpose. Although a resolution in respect of the dividend was passed, the plaintiffs objected to it.

On 10 October 1988, a meeting of G was called to consider a valuation report of its properties and to pass a resolution for the sale of the Changi property. The plaintiffs claimed that there was a gross undervalue, but the resolution authorising the sale of the Changi property was passed.

On 12 October 1988, the plaintiffs obtained an *ex parte* interim injunction restraining G and TLS from selling the Changi property and from paying out the interim dividend. The plaintiffs then applied for a continuation of the interim injunction.

Held:

[1] There are serious questions to be tried namely the passing of the board resolution authorising payment of the large dividend and the question whether such dividend could properly be authorised and paid, as it was not clear from the accounts and documents produced whether G has available profits for distribution and payment of that dividend. Secondly, there is a dispute whether the board resolution authorising the sale of the Changi property was passed at the board meeting held on 10 October 1988.

[2] There is evidence that TLS was urgently pressing for the sale of the Changi property to CH in exchange for shares. TLS was not too supportive of any sale of the property for cash at the market price. The plaintiffs, therefore, have grounds for concern since the intended transaction is purely for the benefit of CH and not for the benefit of the shareholders of G.

[3] On the question of balance of convenience, if TLS is allowed to proceed with his proposal to sell the property to CH, the plaintiffs as minority shareholders would suffer irreversible and irreparable damage. The balance of convenience is overwhelmingly in favour of preserving the *status quo.*

[Injunction continued until trial of this action.]

Legislation referred to:
Companies Act [Sing], s. 160

For the plaintiffs - Tang Khin Wai
For the defendants - B T Tan

JUDGMENT

LP Thean J:

Guan Soon Development Pte. Ltd. (the company), the 1st defendant, is a family company, in which the following are shareholders, each holding the number of shares as set out against his or her respective name as follows:

Name	No. of shares
1. Chong Chooi Ying	14
2. Teo Siew Peng	1,939
3. Teo Siew Poh	1,901
4. Teo Lay Swee (that is, the 2nd defendant)	10
5. Yeo Gek Lang, Susie (wife of 2nd defendant)	10
6. Teo Siew Eng (sister of 2nd defendant)	1,325
7. Teo Lee Hwa @ Teo Siew Luan (sister of the 2nd defendant)	499
8. Teo Au Ghek (sister of 2nd defendant)	2,302
	8,000

The plaintiffs are related to the 2nd defendant: the 1st plaintiff is the second mother of the 2nd defendant, and the 2nd and 3rd plaintiffs are his sisters by the 1st plaintiff. The 1st and 2nd plaintiffs are directors of the company and the 3rd plaintiff is an alternative director of the 2nd plaintiff. The 2nd defendant is the chairman and managing director of the 1st defendant.

In June 1988 or thereabouts, the companies under the control of the 2nd defendant, one of which is Cockpit Hotel International Pte. Ltd. (Cockpit Hotel), were in financial difficulty and their banks and, in particular, United Merchant Bank Ltd., who had placed Cockpit Hotel under receivership, were pressing for settlement of moneys due to them. The plaintiffs were aware of the financial difficulty of the 2nd defendant's companies at that time. The 2nd defendant proposed to acquire all the shares of the company so that they could be made available as security to the banks to raise further banking facilities "to tight over the financial difficulty faced" by his companies. Accordingly, he proposed to purchase from the plaintiffs all their shares of the company at a total price of $16 million. For this purpose, his solicitors prepared a set of documents in draft consisting of (i) a sale and purchase agreement, (ii) a

deed of covenant, and (iii) a deed of gift. The plaintiffs took legal advice on these instruments and found them unacceptable. In response, their solicitors prepared a deed of compromise whereby, among other things, the plaintiffs agreed to sell all their shares of the company to the 2nd defendant at the said price of $16 million on terms and conditions therein stated. The draft deed of compromise was submitted to the 2nd defendant for consideration but no positive response was forthcoming. Thenceforth, there was no further development relating to the acquisition of these shares from the plaintiffs.

Sometime in August 1988, the 2nd defendant put forward an alternative proposal. He proposed that the company should sell its property known as Lot 1772 of Mukim 28 situate at Upper Changi Road to Cockpit Hotel in exchange for shares to be issued by Cockpit Hotel. I shall refer to this property as the "Changi property". He accordingly caused to be served on the directors of the company notice of a meeting to be held on 22 August 1988 for the purpose of considering and resolving the holding of an extraordinary general meeting of the company to pass the following resolution:

> To sell the land forming part of Lot 1772 Mukim XXVIII comprising of an area of approximately 1.2 million square feet without vacant possession to Cockpit Hotel International Pte. Ltd. (Cockpit), for a consideration of S$20 million to be satisfied by the issue of 10 million shares of $1 each at the price of $2 per share in Cockpit on condition that the receivership be withdrawn.

The plaintiffs objected to the proposed resolution, and in view of the objection the 2nd defendant called off the meeting of the board of directors.

Then on 15 September 1988, the 2nd defendant caused the secretary of the company to issue a notice calling for a meeting of directors to be held on 19 September 1988 to approve and confirm the sale of various properties belonging to the company and "to consider declaring an interim dividend on $12 million less 33% tax". The plaintiffs through their solicitors wrote to the board of directors of the company indicating that, in principle, they were agreeable to the proposed declaration of interim dividend but would like to be satisfied that factually there were profits available for the purpose. The plaintiffs said that at the board meeting held on 19 September 1988, no evidence was produced to show that there were available sufficient profits for declaring the interim dividend. The resolution was, however, passed. Subsequently, through their solicitors they objected to the proposed declaration of dividend.

Next, on 4 October 1988 the 2nd defendant caused the company's secretary to issue a notice calling a board meeting to be held on 10 October 1988 for the purpose of considering, among other things, a valuation report dated 26 September 1988 of the Changi property and the sale of Changi property at the price not less than the amount valued. That report valued the property as follows: (1) $34,700,000 with vacant possession and (ii) $30,000,000 without vacant possession. The plaintiffs claimed that the valuation was done on a wrong basis and the amount valued was a gross undervalue. At the meeting of the directors on 10 October 1988, a second valuation report was produced. The second report valued the property as follows: (i) $28,300,000 with vacant possession and (ii) $24,150.00 without vacant possession. The plaintiffs maintained that the second valuation was given on the instructions of the 2nd defendant, and on those instructions the valuation given was far below the market value. The plaintiffs further claimed that at the board meeting the resolution authorising the sale of the Changi property at a price not less than the value contained in the valuation report was in fact passed. The 2nd plaintiff in her affidavit affirmed on 23 October 1989 said (in para. 26):

A board resolution was in fact passed at the board meeting held on 10 October 1988 to sell the 1st defendant's land at no less than the price according to the valuation report of M/s. Knight Frank Cheng Hock Chye & Baillieu dated 26 September 1988 which I verily believe was made on the wrong basis. The resolution was to sell the 1st defendants' land at an unstated price and on unstated terms. There was also no mention of the name of the prospective buyer(s).

On 12 October 1988 the plaintiffs instituted legal proceedings against the company and 2nd defendant seeking injunctive reliefs. On the same day they applied *ex parte* and obtained an interim injunction on the following terms:

(1) That the 1st and 2nd defendants (whether by himself/themselves or by his/their servants or agents or any of them or otherwise howsoever) be restrained, and an injunction be granted restraining them until the hearing of a notice of motion returnable on a day to be fixed by the Judge/Registrar or until further order in the meantime from doing the following acts or any of them, that is to say:

(A) selling or procuring the sale of the 1st defendants' property on Lot 1772 Mukim 28 at Upper Changi Road East Singapore 1750 unless the offers are made in writing to the 1st defendants and the highest offer in terms of purchase price and the terms and conditions of any proposed sale are approved by the board of directors of the 1st defendants at a board meeting in respect of which reasonable notice has been given to all the directors in writing.

(B) selling or procuring the sale of the 1st defendants' property on Lot 1772 Mukim 28 at Upper Changi Road East Singapore 1750 to Cockpit Hotel International Pte. Ltd. (Cockpit), or any corporation or company related to Cockpit or in respect of which the 2nd defendant has or may be having a beneficial interest in its/their shares.

(C) contravening s. 160 of the Companies Act in effecting or procuring any sale of the 1st defendants' property on Lot 1772 Mukim 28 at Upper Changi Road East Singapore 1750 without having the proposal or proposals approved by the company in general meeting.

(D) implementing or carrying into effect the alleged resolution of 19 September 1988 in paying interim dividend of 1,500% less 30% tax for the year ending 31 December 1988 without having obtained a written confirmation from an independent firm of public accountants unequivocally and unconditionally certifying that the 1st defendants are in possession of available profits to justify the payment of interim dividends in the amount stated in the said alleged resolution.

Subsequently, a motion was taken out for this interim injunction to be continued and the motion came before me. At the conclusion of the hearing, I allowed the motion and continued the injunction until the trial of this action.

This is a *quia timet* action by the plaintiffs for an injunction to restrain the commission of apprehended or threatened wrongful acts in the affairs of the company. On the material before me there are serious questions to be tried. First, the board resolution authorising the payment of the large dividend had been passed and there is the question whether such dividend could properly be authorised and paid, as it was not clear from the accounts and documents produced whether the company has available profits for distribution and payment of that dividend. Secondly, there is a dispute whether the board resolution authorising the sale of the Changi property was passed at the board meeting held on 10 October 1988. The plaintiffs claimed that it was passed notwithstanding their objection. That was denied by the 2nd defendant who maintained that as there was no consensus among the directors at the board meeting on 10 October 1988 the sale of the property was deferred to future board meeting.

Therefore, whether it was passed or not remains a question to be tried. But there was evidence before me that the 2nd defendant was pursuing urgently the matter of disposal of that property to Cockpit Hotel in exchange for shares. On 11 October 1988 the 2nd defendant proposed again to transfer the Changi property to Cockpit Hotel in exchange for shares of the latter. His solicitor on 11 October 1988 wrote to the plaintiffs' solicitors, Messrs Lee & Lee, and the material portion of that letter is as follows:

> Our client proposes that M/s. Guan Soon Development Pte. Ltd., join in the equity of M/s. Cockpit Hotel Pte. Ltd., by transferring its property known as Lot 1772 Mukim 28 to M/s. Cockpit Hotel Pte. Ltd., in exchange for new shares in M/s. Cockpit Hotel Pte. Ltd.
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> The aforesaid property has been valued by M/s. Knight Frank Cheong Hock Chye & Baillieu to be worth about $34,700,000 although our client has reservation about it. A copy of the valuation report dated 26 September 1988 is enclosed herein for your client's perusal.
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> Be that as it may, the injection of the said property would enable our client to restructure the banking facilities granted to M/s. Cockpit Hotel Pte. Ltd.

It was argued on behalf of the plaintiffs that the proposed transfer of the Changi property was purely for the benefit of Cockpit Hotel and not for the benefit of the shareholders of the company and that the 2nd defendant was in some great haste to have the transaction effected on the basis of the valuation contained in the valuation report. This allegation was not entirely without foundation as one could glean from the documents produced.

On the material before me the 2nd defendant was not too supportive of any sale by the company of the property for cash at the market price which was much higher than that given in the valuation report; his interest appeared to lie in the proposed sale by the company to Cockpit Hotel in exchange for shares. There was evidence that in September 1988 an interested party was prepared to purchase the Changi property at the price of $57 per sq. ft., subject to contract, as evidenced by the letter dated 9 September 1988 from Messrs. Hin, Rai & Tan. Yet, the company through its solicitors, M/s. Wee Swee Teow & Co. (presumably on instructions from the 2nd defendant), in response to the offer stated that the company was "not selling the property" then. About a month later, another party, Southern Realty Co., wrote to the company stating that they had "an interested party" to buy the property at the price of $58 per sq. ft. with vacant possession. Both these prices quoted were far above the value given in the valuation report. No response appeared to be forthcoming from the company.

I now turn to the question of balance of convenience. If the injunction is not granted or continued, the 1st defendant would or might be in a position to proceed further with the board resolution and dispose of the property at a price which might be less than the market value. In that event, the plaintiffs as minority shareholders would suffer irreversible and irreparable damage. As the 2nd defendant and his companies were in financial difficulties he would or might not be in a position to satisfy the damages awarded. If the injunction is continued and the defendants should succeed at the trial, the company's sale of the property would merely be delayed and the company and its shareholders would not suffer any irreparable damage. The balance of convenience is overwhelmingly in favour of preserving the *status quo* and continuing the injunction until the trial of this action. I accordingly made the order.

Also found [1991] 3 CLJ 2277